COURT NO. 2

In The High Court of Uttaranchal at Nainital.

First Appeal From Order No. 987 of 2001.
(Old No. 1139 of 1990)

National Insurance Company Ltd.
Having its Divisional Office at
Mahatma Gandhi Marg, Allahabad
through its Senior Divisional Manager.
.....Appellant

Versus

(1)Bankey Lal Sajvar,
R/o Village-Kyark, P.O. Basukedar,
District-Chamoli
(2)Sri Jai Krit Singh
R/o Village-Kuher, Tehsil & District-Chamoli,
..... Respondents.

Sri Lalit Belwal, learned counsel for the appellant.
Sri Rajendra Dobhal, learned counsel for the respondent No.2.

Dated: 16th Aug.,2004.

Hon'ble P.C. Verma,J.
Hon'ble B.S.Verma,J.

This appeal has been preferred by the appellant-National Insurance Company Ltd. under Section 173 of the Motor Vehicles Act, 1988 against the judgment and award dated 31.07.1990 passed by Motor Accident Claims Tribunal/District Judge, Chamoli in Motor Accident Claim Petition No. 7 of 1988,

Brief facts of the case giving rise to the present appeal are that on 14.02.1988 claimant Bankey Lal was travelling from Karn Prayag to Gopeshwar in Bus No. USY 03268; that at about 02.00 in the noon the aforesaid bus met with an accident near Baidanu (Langasu) in which Bankey Lal- claimant sustained serious injuries. The claimant got himself treated at District Hospital, Gopeshwar and thereafter at Doon Hospital, Dehradun

from 14.2.1988 to 1.8.1988 and incurred Rs. 8980/- on his treatment. The said bus was owned by Opp.party No.1 and insured with Opp.party No.2-National Insurance Company. The accident was caused due to rash and negligent driving of the vehicle (Bus). The injured was employed in the office of District Basic Education Officer and was earning Rs. 1200/- per month as his salary. The claimant had filed the claim petition for compensation of Rs. 50,000/- due to the injuries received by him.

The Opp.parties contested the case before the Tribunal denying all the allegations except the insurance of the vehicle. On the pleading of the parties, the Tribunal framed the following issues:-

(1) Whether the petitioner was travelling at the aforesaid date, time and place by the alleged Bus?

(2) Whether the alleged accident was occurred on 14.02.1988 at Baidunu (Langasu) , in which the petitioner was injured as alleged in the petition?

(3) Whether the petitioner is entitled to receive compensation due to accident ? If so, from which of the Opp. party or both of them?

The Tribunal after recording the evidence, decided the issues in favour of the claimant and awarded the claim petition for Rs. 35,000/- as compensation in which the Opp. party No.2- National Insurance Company was held liable to pay compensation amounting to Rs. 25,000/-.

The appeal was filed only on the ground that the appellant-Insurance Company had only statutory liability of Rs. 15,000/- per passenger while the Insurance Company has been held liable to pay Rs. 25,000/-. The learned counsel for the appellant submits that in view of the judgment of Apex Court in ***New India Assurance Co. Ltd.***

versus C.M. Jaya and others, reported in (2002) 2 Supreme Court Cases 278, the Insurance Company is liable to pay the statutory liability. Rest of the amount of award is to be paid by the owner and driver of the vehicle in question. The owner was party before the Tribunal. The Tribunal has not bifurcated the amount after considering the insurance policy. Therefore, we provide that Rs. 15,000/- as statutory compensation alongwith interest shall be paid by the appellant-National Insurance Company Ltd. and rest of the payment shall be made by the owner of the vehicle in question. However, we do not find any infirmity or illegality in the impugned order on the basis of evidence on record in determining the compensation payable to the claimant.

Therefore, the compensation awarded by the impugned order is hereby affirmed. The appeal is partly allowed. The case is sent back to the Tribunal for bifurcation of the amount to be paid to the claimant by the Insurance Company and owner of the vehicle in question as per provisions of the old Act. The Tribunal concerned shall decide the mater within two months from the date of receipt of certified copy of this order after hearing the owner of vehicle in question. Sri Lalit Belwal, learned counsel for the appellant-National Insurance Company Ltd. undertakes to ensure that the Insurance Company will place the order of this Court to the Tribunal concerned within a month from today.

The amount already deposited in this case towards the compensation before the Tribunal shall be released forthwith in favour of the claimant.

(B.S. Verma, J.) **(P.C. Verma, J.)**

P.Singh